

REMARKS/ARGUMENTS

I. Status of the Application

Claims 13-33 were currently pending before the Examiner. Applicant has amended claims 13, 14, 16, 18, 23, 25, 29, 30, 31, and 33 with this response. No new matter is presented by way of this amendment. Applicant has also cancelled claims 15 and 22. In light of these amendments and cancellations, claims 13, 14, 16-21, and 23-33 are now pending.

Of the pending claims, the Examiner has rejected claims 13, 14, 25, 29, and 30-33 on the ground of nonstatutory, obviousness-type, double patenting over claims of U.S. Patent No. 6,703,418. Further, the Examiner has rejected claims 13-33 under 35 U.S.C. § 103(a) as being unpatentable over Vaupel et al. and Noyes et al. As explained below, Applicant respectfully traverses these rejections and requests withdrawal of the same.

II. Rejection under Nonstatutory, Obviousness-Type, Double Patenting

Applicant has taken the Examiner's advice and submitted with this Amendment a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c). Consequently, Applicant respectfully requests that the Examiner withdraw this rejection.

III. Rejection under 35 U.S.C. § 103(a)

Claims 13-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaupel et al. and Noyes et al. Applicant respectfully disagrees with this rejection as neither Vaupel nor Noyes, alone or in combination, teach and suggest the elements of the present invention.

Vaupel presents data from a study that indicates the effects of administering delta-9-tetrahydrocannabinol *to dogs*. Vaupel does not present any data relating to the effects of administering delta-9-tetrahydrocannabinol *to humans*. As the pending claims, as amended, require that the delta-9-tetrahydrocannabinol be administered to human patients, Vaupel cannot teach or suggest the present invention.

Moreover, Vaupel does not suggest that the dogs that participated in the study gained any weight as a result of their stimulated appetite. Further, Vaupel references a “classic study of barbiturate intoxication, [which] reported that patients decreased their calorie intake while gaining weight.” *See* Vaupel, page 542. Thus, Vaupel teaches that there is not a direct correlation between a stimulated appetite and weight gain. As Vaupel does not teach or suggest that administration of delta-9-tetrahydrocannabinol can stimulate weight gain, Vaupel does not teach or suggest the present invention.

Noyes also does not teach or suggest the present invention. Noyes discloses the analgesic properties of THC *in cancer patients*. Noyes does not teach the use of THC *in HIV patients* to stimulate weight gain. In addition, while Noyes teaches that THC increased the appetite of some cancer patients, Noyes also teaches that some of the cancer patients experienced nausea, vomiting, and diarrhea. *See* Noyes, page 644. If patients are experiencing nausea, vomiting, and diarrhea they are not likely gaining weight. Thus, based on the teaching of Noyes, one of skill in the art would not be motivated to use THC in HIV patients to stimulate weight gain. Consequently, Noyes does not teach or suggest the present invention.

V. Conclusion

None of Applicant’s amendments or cancellations are to be construed as dedicating any such subject matter to the public, and Applicant reserves all rights to pursue any such subject matter in this or a related patent application.

It is respectfully submitted, in view of the foregoing Amendment and Remarks, that all of the objections and rejections in the Office Action dated March 30, 2006 have been overcome and should be withdrawn. Accordingly, Applicant respectfully submits that claims 13, 14, 16-21, and 23-33 are in condition for allowance, and request early and favorable notification to that

effect. The Examiner is encouraged to contact the undersigned with any questions or to otherwise expedite prosecution.

Respectfully submitted,

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Date: May 30, 2006